

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

GROVER LEE PETTES,

Plaintiff,

vs.

No. CIV 00-1803 LH/LCS

LAWRENCE ARCHULETA AND TOM
MASSAD,

Defendants.

MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the Court upon Plaintiff's Motion to Permit Sanction Amount to be paid into Trust Accounts and Related Relief, filed February 4, 2003 (**Doc. 175**).¹ Plaintiff's counsel requests that the amount of \$1,903.11, imposed on him as a monetary sanction by Magistrate Judge Leslie Smith in December 2001, be held in trust by the law firm of Holt & Babington pending the outcome of an appeal from the sanction order. Plaintiff also requests that the Court certify the sanction order for appeal pursuant to the provisions of Fed.R.Civ.P. 54(b).²

An order awarding sanctions is not appealable under Rule 54(b). Black Assoc. of New Orleans Firefighters (Banoff) et al. v. City of New Orleans, La., 911 F.2d 1063 (5th Cir. 1990) (not deciding whether under Rule 54(b) an order awarding sanctions is appealable, but noting that Seventh Circuit has held that order awarding attorney's fees and expenses incurred as a sanction for failing to comply with discovery, was not certifiable under Rule 54(b) because it did not dispose of a separate substantive claim) (citing Magnavox Company v. Marshall, 742 F.2d 369,

¹ The Court's ruling on the present motion dispenses of the need for a responsive pleading.

² The Tenth Circuit dismissed an earlier appeal of the sanctions order. Doc. 164.

371 (7th Cir.1984); M.A. Mortenson Co. v. U.S., 877 F.2d 50 (Fed.Cir. 1989) (the non-appealability of a discovery sanction is not changed by the fact that it is reduced to partial judgment under Rule 54(b), which refers only to claims asserting substantive right, "rather than requests that are incidental to the procedure for obtaining a judicial award and enforcing it."). Accordingly, Plaintiff's motion is DENIED.

IT IS SO ORDERED.



UNITED STATES DISTRICT JUDGE